

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.173 OF 2005

Dr.Tapan Prasad Bagchi)
Indian Citizen, aged about 58)
years, Occpn. Director of the)
National Institute of Industrial)
Engineering Soccity (NITIE),)
residing at the Director's)
Bungalow sitauted in NITIE)
Campus at Vihar Lake, Powai)
Mumbai 400 087.)... Petitioner

Versus

1. The State of Maharashtra)
through the Assistant)
Commissioner of Police)
Powai Police Station, to be)
served to through the)
Public Prosecutor High Court,)

Mumbai.)

2. Bhagwan Jagannath Nitnaware,)
Indian Citizen, Mumbai)
Inhabitant, aged about 41 Yrs.)
Occpn. Employee of NITIE)
having designation of)
Programmer, residing at)
Type-III, Flat No.1, NITIE)
Campus, Vihar Lake, Powai,)
Mumbai 400 087.)... Respondents

Mr.A.S.Uraizee for petitioner

Mr.D.S.Mhaispurkar, APP for RespdentNo.1

Mr.V.C.Desai for Respondent No.2

Mr.B.H.Mehta, APP for State

CORAM : R.M.S.KHANDEPARKER &
P.V.KAKADE, JJ.

DATE : 9TH FEBRUARY, 2005.

ORAL JUDGMENT : (Per Khandeparkar, J.)

. Heard.

2. Rule. By consent the rule is made returnable forthwith.

3. The petitioner seeks to quash the FIR No.255/2004 dated 13.8.2004 and the consequent proceedings initiated under the provisions of Section 7(1)(c)(d) of the Protection of Civil Rights Act, 1955 on the ground that the said FIR and the chargesheet alongwith the materials in support thereof do not disclose any offence under the said provisions of law.

4. Referring to the FIR and the statements which are stated to have been recorded by the Investigating Agency in course of the investigation the learned advocate for the Petitioner submitted that there is absolutely no material collected by the Investigating Agency in support of the allegations made by the complainant against the Petitioner either as regards the words alleged to have been spoken by the Petitioner or in relation to the alleged intentional insult to the

respondent no.2 complainant, which could warrant prosecution under Section 7(1)(c)(d) of the said Act. The learned advocate appearing for Respondent No.2 on the other hand submitted that it is too premature for this court to interfere in the matter at this stage and the Petitioner can very well defend the proceedings before the learned Magistrate.

5. It is not in dispute that pursuant to the FIR since the proceedings were sought to be initiated under the said Act along with the provision of Section 3(1)(x) of the Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the Petitioner had raised preliminary objection before the learned Special Judge dealing with the matters under the Atrocities Act and by order dated 7.1.2995, the learned Special Judge while upholding the said objection the Petitioner was discharged in relation to the offence alleged against the Petitioner under the Atrocities Act. While discharging the petitioner in relation to the offence under the Atrocities Act the Special Judge, however, as regards alleged offence under the said Act had remanded the case to the Metropolitan Magistrate, Andheri, Mumbai for disposal according to law.

6. Section 7(1)(c) of the said Act provides that whoever by words, either spoken or written, or by sign or by visible reprehensions or otherwise, incites or encourages any person or class of persons or the public generally to practice "untouchability" in any form whatsoever shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees. Section 7(1)(d) provides that whoever insults or attempts to insult, on the ground of untouchability, a member of a Scheduled Castes shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees. Explanation to said Section provides that a person shall be deemed to incite or encourage the practice of untouchability for the purpose of offence under Section 7(1)(c) if he, directly or indirectly, preaches untouchability or its practice in any form; or if he justifies, whether on historical, philosophical or religious ground or on the ground of any tradition of the caste system or on any other

ground, the practice of untouchability in any form.

7. Plain reading of the FIR would disclose that it nowhere contains any allegation regarding the Petitioner having incited or encouraged any person or class of persons or the public generally to practice untouchability in any form whatsoever. It is not understood how the provision of Section 7(1) (c) are at all attracted considering the contents of the FIR as well as the statements of witnesses recorded by the Investigating Agency pursuant to the said FIR. Obviously, therefore, the Petitioner is justified in contending that there is absolutely no case for proceeding against him under Section 7(1)(c). Once the facts constituting the basic ingredients of the said provision are totally absent, question of driving the petitioner to face the proceeding does not arise at all. The absence of ingredients of the offence under Section 7(1)(c) virtually discloses absence of jurisdictional fact the presence of which is absolutely necessary in order to enable the Court to proceed against the petitioner for the offence under the said provision of law and therefore, there cannot be insistence for the petitioner to face the proceeding before the Magistrate

and this Court certainly is empowered in exercise the writ jurisdiction to quash such proceedings.

8. As regards the proceeding under Section 7(1)(d) of the said Act is concerned, undoubtedly the FIR discloses the words which could be insulting which could be termed as an attempt to insult a member of scheduled castes on the ground of untouchability. Being so, on the face of the FIR certainly the respondent no.2 who is justified in contending that there should be no case for interference in writ jurisdiction.

9. However, the fact remains that after filing the FIR the Investigating Agency has investigated the matter and filed the Charge-sheet after recording the statements of 21 witnesses. With the help of the learned APP we have perused those statements and we find that none of the statements corroborates the allegation of the Respondent no.2 that the petitioner either by words or otherwise at the relevant time and date and the place had insulted or attempted to insult the respondent no.2 on the ground of untouchability. Undoubtedly the Respondent no.2 in FIR has stated that the petitioner had insulted him by use of abusive words and those words were recorded in FIR. None

of the witnesses in their statements have stated that they had heard the Petitioner uttering any of those words allegedly addressed to the respondent No.2 either at the relevant time and day and place or any other time. Not a single statement on record even suggests that the Petitioner is in habit of uttering those words either to respondent no.2 or to any one else. No material could be collected by the Investigating Agency in the course investigation pursuant to the FIR to establish that the conduct of the petitioner either in the office where he is working or otherwise discloses that he is in habit of insulting the members of the Schedule Castes in one way or other which can be said to be an offence under the said Act. Taking into consideration all the aspects we fail to understand how a person could be prosecuted under the provisions of the said Act. Being so, there is no question of the petitioner being compelled to appear before the Magistrate and to face the proceedings. Once all the materials collected in the course of investigation pursuant to the FIR lodged by Respondent No.2 do not disclose any act on the part of the petitioner, which can warrant proceedings under Section 7(1)(d), certainly it is a fit case for quashing of FIR and all the subsequent proceedings in that regard.

10. Undoubtedly as a rule this court does not interfere in a matter for quashing FIR, once the FIR prima facie discloses a cognisable case. However, once it is not in dispute that pursuant to the lodging of FIR subsequent investigation is carried out and the investigation machinery has filed a charge-sheet, but the entire materials collected do not disclose the offence under any of the provisions of the said Act, certainly it cannot be said that interference could be premature or unwarranted. On the contrary it would be a fit case for interference and to quash the proceeding as such a proceeding virtually amounts to unwarranted harassment to the accused person.

11. In the result therefore the petition succeeds. The same is allowed and the FIR No.255 of 2004 dated 13.8.2004 lodged by the Respondent No.2 at Powai Police Station and consequently criminal proceedings under the provisions of the said Act are hereby quashed. Rule is made absolute with no order as to costs.

12. The Bail bond stated to have furnished by the Petitioner is cancelled.

(R.M.S.Khandeparkar, J.)

(P.V.Kakade, J)